

San Diego City Attorney's Office

ORDINANCE TO REPEAL MUNICIPAL CODE SECTIONS 83.0202, 83.0203, 85.10, and 52.20 RELATING TO TRAFFIC, VEHICLES, AND PEDESTRIANS

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SDMC § 83.0202 – **“Interfering with Traffic”**

Municipal Code section 83.0202 makes it unlawful for any person to stand or sit in any roadway or curb if such conduct interferes with the movement of traffic.

It was adopted in 1942.

SDMC § 83.0202 is **Preempted by State Law**

Pedestrian activity on roadways is already closely regulated by the California Vehicle Code and the California Supreme Court struck down ordinances identical to section 83.0202 in other cities.

Pipoly v. Benson, 20 Cal. 2d 366, 375 (1942); *People v. McNeil*, 96 Cal. App. 4th 1302, 1306-308 (2002).

SDMC § 83.0203 – “Pedestrians Standing on Sidewalks”

Municipal Code section 83.0203 regulates pedestrians on sidewalks, making it unlawful for any pedestrian to stand on the sidewalk, “except as near as practicable to the building line or the curb line.”

It was adopted in 1942.

SDMC § 83.0203 is **Unconstitutionally Vague**

The United States District Court for the Southern District of California recently found that Municipal Code section 83.0203 is unconstitutionally vague “[b]ecause the ordinance fails to provide notice to the public and provides no guidance to officers.”

Lee v. City of San Diego, 492 F. Supp. 3d 1088, 1095 (S.D. Cal. 2020)

SDMC § 85.10 – “Intoxicated Person in Vehicles — Prohibited”

Municipal Code section 85.10 provides that “No person who is under the influence of intoxicating liquor or narcotic drugs shall be in or about any motor vehicle, while such vehicle is in or upon any street or other public place.”

It was adopted in 1958.

SDMC § 85.10 is **Preempted by State Law**

Since section 85.10 was enacted, the California Supreme Court has held that state law preempts local ordinances addressing criminal aspects of public intoxication.

See In re Koehne, 59 Cal. 2d 646 (1963); *In re Zorn*, 59 Cal. 2d 650 (1963); *People v. Lopez*, 59 Cal. 2d 653 (1963).

SDMC § 85.10 is **Preempted by State Law**

There are already state laws that regulate many aspects of public intoxication:

- Penal Code section 647(f) – prohibits public intoxication
- Vehicle Code section 23152 - prohibits driving while under the influence of alcohol or drugs
- Health & Safety Code section 11550 – prohibits use of certain controlled substances

SDMC § 52.20 – “Obstructing Public Places — Prohibited”

Municipal Code section 52.20 makes it “unlawful for any person to stand or sit on any sidewalk or crosswalk” that obstructs any person from passing and makes it unlawful for any person to “obstruct or stand around the entrances of any public hall or public building” within the City of San Diego.

It was adopted in 1908.

SDMC § 52.20 is **Unconstitutionally Vague**

Municipal Code section 52.20 does not notify the public as to what conduct is prohibited and provides no guidance to officers. Like section 83.0203, this section could create enforcement issues because it fails to sufficiently define the prohibited conduct and could criminalize lawful, innocent behavior.

PROPOSED ACTION

The City Attorney recommends that the City Council approve two Ordinances amending the San Diego Municipal Code by repealing sections 83.0202, 83.0203, 85.10, and 52.20.

Subitem A

Approve an Ordinance amending Chapter 8, Article 3, Division 2 of the San Diego Municipal Code by repealing Sections 83.0202 and 83.0203, and Chapter 8, Article 5, Division 00, of the San Diego Municipal Code by repealing Section 85.10, all relating to traffic, vehicles, and pedestrians.

Subitem B

Approve an Ordinance amending Chapter 5, Article 2, Division 00 of the San Diego Municipal Code by repealing Section 52.20, relating to obstructing public places.